

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Universal Instruments Corp. :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Corporation :
Franchise Tax under Article 9A of the Tax Law for :
the Years Ended 12/31/80-12/31/81. :

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 16th day of July, 1985, he served the within notice of Decision by certified mail upon Universal Instruments Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Universal Instruments Corp.
P.O. Box 825
Binghamton, NY 13902

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
16th day of July, 1985.

David Parchuck

Ann M. O'Hagerty

Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Universal Instruments Corp. :
for Redetermination of a Deficiency or Revision :
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Franchise Tax under Article 9A of the Tax Law for :
the Years Ended 12/31/80-12/31/81. :
:

AFFIDAVIT OF MAILING

State of New York :
ss.:
County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 16th day of July, 1985, he served the within notice of Decision by certified mail upon Charles R. Goulding, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Charles R. Goulding
c/o Dover Corp.
277 Park Ave., 36th Fl.
New York, NY 10172

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
16th day of July, 1985.

David Parchuck

James A. Daye
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

July 16, 1985

Universal Instruments Corp.
P.O. Box 825
Binghamton, NY 13902

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Charles R. Goulding
c/o Dover Corp.
277 Park Ave., 36th Fl.
New York, NY 10172
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In The Matter of the Petition
of
UNIVERSAL INSTRUMENTS CORPORATION
for Redetermination of a Deficiency or for
Refund of Corporation Franchise Tax under
Article 9-A of the Tax Law for the Years Ended
December 31, 1980 and December 31, 1981.

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DECISION

Petitioner, Universal Instruments Corporation, P.O. Box 825, Binghamton, New York 13902 filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the years ended December 31, 1980 and December 31, 1981 (File No. 48399).

A hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 3, 1985 at 2:45 P.M. Petitioner appeared by Charles R. Goulding, Esq. and Thomas Diehl, CPA. The Audit Division appeared by John P. Dugan, Esq. (Lawrence A. Newman, Esq., of counsel).

ISSUE

Whether petitioner was entitled to a DISC export credit for the tax years ended December 31, 1980 and December 31, 1981.

FINDINGS OF FACT

1. On August 18, 1983, as the result of a field audit, the Audit Division issued two notices and demands for payment of corporation tax due against

petitioner, Universal Instruments Corporation.¹ The first was in the amount of \$29,734.00 plus interest of \$14,211.85 for a total due of \$43,945.85 for the year ended December 31, 1980. The second was in the amount of \$42,209.00 plus interest of \$9,392.84 for a total due of \$51,601.84 for the year ended December 31, 1981.

2. Petitioner, a Delaware corporation, manufactures and sells high technology equipment for the electronics industry. Approximately 90 percent of petitioner's property and 90 percent of its employees are located in Binghamton, New York. During the years in issue, petitioner shipped all of its foreign exports to overseas customers from its Binghamton facility. Petitioner organized Universal Instruments International Corporation ("International"), a New York corporation, as a wholly-owned subsidiary on October 20, 1972. International was qualified as a Domestic International Sales Corporation ("DISC") under the Internal Revenue Code during the years in issue. International's income consisted entirely of commissions from export sales of petitioner's products.

3. On July 6, 1979, petitioner organized Universal Instruments International Sales Corporation ("Sales"), a Delaware corporation, as a wholly-owned subsidiary to act as a holding company. On July 10, 1979 petitioner was itself acquired as a subsidiary of Dover Corporation. At no time were the shares of stock of International transferred from petitioner to Sales or to any other corporation.

4. On audit, the auditor determined that Sales was the stockholder of International rather than petitioner. Apparently, both the auditor and petitioner's representatives were then under the misimpression that Sales was the 100

1 It is unclear from the record why notices and demands were issued in this case rather than notices of deficiency; however, neither party raised this as an issue.

percent stockholder of International and, as a result, the auditor determined that International had not received more than five percent of its income from its "stockholder" during the years in issue and, therefore, it was not a tax-exempt DISC. Accordingly, the auditor further determined that petitioner was not entitled to the DISC export credit since the credit is only available to a stockholder of a DISC. It was only two weeks prior to the hearing in this matter that petitioner's representatives, in preparing the case, discovered that petitioner rather than Sales was, in fact, the stockholder of International. The Audit Division indicated that the only reason for the disallowance of the DISC export credit was the question of the status of petitioner as the stockholder of International.

5. There were other adjustments made on audit involving losses from the sale of property under Internal Revenue Code section 1231(b) and the property factor of the business allocation percentage. These issues were settled at a pre-hearing conference and are no longer in contention.

CONCLUSIONS OF LAW

A. That a corporation which elects to be treated as a DISC for Federal income taxes will be treated as a DISC for New York corporation franchise tax purposes. (Tax Law §208.1; 20 NYCRR 3-9.1[a]). A DISC which during the taxable year (1) received more than five percent of its gross sales from the sale of inventory or other property which it purchased from its stockholders, (2) received more than five percent of its gross rentals from the rental of property which it purchased or rented from its stockholders, or (3) received more than five percent of its total receipts, other than sales and rentals, from its stockholders, is exempt from corporation franchise tax with adjustments

required to items of receipts, expenses, assets and liabilities. (Tax Law §208.9[1]).

B. That a stockholder of a tax exempt DISC is entitled to a DISC export credit, computed separately for each DISC, with certain limitations not at issue herein. (Tax Law §210.13). Inasmuch as International met all the requirements of a tax exempt DISC during the years in issue and petitioner has shown that it was the stockholder of International, petitioner was entitled to a DISC export credit for the tax years ended December 31, 1980 and December 31, 1981.


C. That the petition of Universal Instruments Corporation is granted to the extent indicated in Finding of Fact "5" and Conclusion of Law "B"; that the Audit Division is directed to modify the notices and demands for payment of corporation tax due issued August 18, 1983 accordingly; and that, except as so granted the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

JUL 16 1985


PRESIDENT


COMMISSIONER


COMMISSIONER